

Technical Bulletin 1.1

GMA Updates:

Counties and Cities Planning for Critical Areas and Natural Resource Lands under the Growth Management Act

Key Issue

According to a schedule established by the RCW 36.70A.130(4) each city and county in Washington not planning under RCW 36.70A.040 must take action to review and, if needed, revise its policies and/or development regulations regarding critical areas and natural resource lands every seven years to ensure compliance with the Growth Management Act (GMA).

The schedule for when the first update must be completed for these counties “planning for critical areas and natural resource lands only” (see attached GMA map) and the cities within them is the following:

- December 1, 2005 – Cowlitz and Skamania counties
- December 1, 2007 – Adams, Asotin, Grays Harbor, Klickitat, Lincoln, Okanogan, Wahkiakum, and Whitman counties

This bulletin provides a general overview of how to meet this requirement.

Discussion

Generally, local governments update their plans and regulations on an on-going basis to reflect local needs, new data, and current laws. While updates can be done on a continuing basis, they must occur in a deliberate manner every seven years, according to the schedule established in RCW 36.70A.130(4).

Since 1995 a number of changes have been made to the GMA. The most relevant change for counties planning for critical areas and natural resource lands is the new requirement in RCW 36.70A.172 for including the best available science in critical area policies and regulations and for giving special consideration to measures for protecting anadromous (e.g., salmon and bull trout) fisheries.

The GMA Update process includes four basic steps: (1) establish a public participation program that identifies procedures and schedules for the review, evaluation, and possible revision process; (2) review of relevant regulations; (3) analysis of need for revisions; and (4) adoption of an appropriate resolution and/or amendments. Questions about these steps are discussed below.

What are the relevant plans and regulations to be updated?

For counties and cities that are planning for critical areas ordinances and natural resource lands only under the act, the Update process must occur for local regulations regarding:

- Designation and protection of critical areas (i.e., frequently flooded areas, fish and wildlife habitat, aquifer recharge areas, wetlands, and geologically hazardous sites).
- Designation of natural resource lands of long-term commercial significance (for agricultural, forest, and mineral resources). Such resource lands are usually located in counties and only occasionally in cities.

How much review should be done?

The *level* of review can be abbreviated or lengthy, based on certain common-sense factors. For example, a small, slow-growing jurisdiction with a few or no critical areas may not need to spend much time reviewing its critical areas regulations, if it had updated these regulations since 1995 to include the best available science under RCW 36.70A.172. Also, many towns and cities do not contain any “natural resource lands of long-term commercial significance” and, consequently, will not have regulations to review for such lands.

For most local governments, reviewing critical areas is very important. The GMA was amended in 1995 to require that local policies and regulations include the best available science and give special consideration to the protection of anadromous fisheries. [See RCW 36.70A.172(1).]

Regarding natural resource lands, GMA amendments have not been substantial. The state supreme court, however, in two decisions has emphasized the importance of designating and conserving agricultural lands of long-term commercial significance and has clarified the definitions to be used.¹ Counties (and, if applicable, cities) should review their designations of natural resource lands of long-term commercial significance in light of these decisions.

What local analysis is needed regarding regulations for critical areas or natural resource lands?

A local government must determine whether its existing local regulations for critical areas and natural resource lands meet GMA requirements or need to be revised. The relevant requirements for critical areas and natural resource lands are contained in RCW 36.70A.050(3), 36.70A.060, 36.70A.131, 36.70A.170, 36.70A.172(1), and 36.70A.175. Goals are in RCW 36.70A.020 and definitions in 36.70A.030. The Washington State Office of Community Development (OCD) also adopted minimum

¹ *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 14 P.3d 133 (2000); *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 959 P.2d 1091 (1998).

guidelines, as required by law, to help local governments classify critical areas and natural resource lands of long-term commercial significance. These are contained in Chapter 365-190 WAC. To help jurisdictions demonstrate they have met new GMA requirements for protecting critical areas, OCD adopted procedural criteria for including the best available science and giving special consideration to the protection of anadromous fisheries. (See Part Nine of Chapter 365-195 WAC). OCD also has prepared *Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas* and *Model Code Recommendations for Designating and Protecting Critical Areas* (draft). This information on the best available science information for critical areas is available online at www.oed.wa.gov/growth under the heading “Best Available Science” or by calling (360) 725-3000.

The local analysis should include appropriate public process and should be documented in the public record, reflecting consideration of the assumptions, facts, analysis, and conclusions.

What should be adopted?

RCW 36.70A.130(1) requires counties and cities to “take legislative action” to determine whether or not to revise a plan or regulation. “Legislative action means the adoption of a resolution or ordinance following the notice and public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore.” Only the local legislative authority can revise the comprehensive plan and development regulations, and the action that must be taken to do so is the adoption of an ordinance or resolution.

If the analysis shows that the existing regulations do not comply with current GMA requirements, the jurisdiction must take the next step by developing substitute or revised language that will meet GMA goals and requirements. Again, OCD has prepared in cooperation with state natural resource agencies *Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas* and *Model Code Recommendations for Designating and Protecting Critical Areas* (draft) for local governments to consider in analyzing and developing substitute language.

Depending on the outcome of its review and analysis, each local government should adopt one of the following by the deadline established for its jurisdiction in RCW 36.70A.130(4) :

- A resolution or an ordinance finding that, based on careful consideration of the facts and law, the jurisdiction’s regulations for critical areas and natural resource lands comply with the GMA and the jurisdiction has met its Update requirement under RCW 36.70A.130(1);
- An amendment (or amendments) to regulations for critical areas and/or natural

resource lands of long-term commercial significance, so that the adopted regulations comply with the GMA; or

- A combination of both items above.

[OCD cannot waive or extend a jurisdiction's deadline established by RCW 36.70A.130 (4).] In fact, "planning for critical areas and natural resource lands only" cities and counties must complete GMA Update requirements according to the established schedules to be considered in compliance with the GMA. Only those counties and cities in compliance with these schedules will be eligible to receive funds from the Public Works Trust Fund or the Centennial Clean Water account (RCW 36.70A 130(7)). To receive preference for grants and loans subject to the provisions of RCW 43.155.050, "planning for critical areas and natural resources lands only" counties and cities must also be in compliance with their established Update schedule. However, a local government that has made significant progress on its Update process, but is not able to adopt all needed revisions their established Update deadline would be prudent in taking steps to demonstrate good faith and progress. The following steps are recommended: (a) adopt by the jurisdiction's Update deadline a resolution that documents the local progress and contains a schedule for completing the Update; and (b) continue moving ahead as quickly as possible to be in full compliance with the GMA. (Please note, however, that following these interim steps does not relieve a local government of its Update requirements, nor does it necessarily mean that a local government will be eligible for state grants and loans.)

All draft and adopted regulations, including amendments, for critical areas and natural resource lands, must be submitted to OCD, according to RCW 36.70A 106. All adopted resolutions regarding the GMA Update also should be submitted to OCD.

Can a jurisdiction's adopted resolution or amendments be appealed to a court?

The short answer is that a person or organization with standing probably could appeal a jurisdiction's resolution or regulatory amendment to a court, based on an argument that the resolution or amendment does not comply with the GMA. However, a jurisdiction that has followed a good process for reviewing and, if needed, revising its development regulations reduces legal risks considerably.

What if a jurisdiction does not adopt either a resolution or an amendment to its critical area regulations (and, for counties, its natural resource lands regulations)?

If not adopting either an appropriate resolution or regulatory amendment, a jurisdiction may be listed in OCD data as not in compliance with the GMA Update requirement [i.e., RCW 36.70A.030(1)] and also would be vulnerable to a "failure to act" determination by a court of law.

Can a jurisdiction complete Update requirements prior to their deadline?

A jurisdiction can complete the Update process prior to their deadline if they complete the process in the manner as described above and if they have completed the process on

or after January 1, 2001. The deadline for their next update would then become seven years from the deadline for their jurisdiction as proscribed in RCW 36.70A.130(4).

Contact

For more information, contact the OCD regional planner for your area or the Growth Management Services at (360) 725-3000, or by mail at P.O. Box 48350, Olympia, Washington 98504-8350. GMA Update information will also be posted periodically on the following Web site: www.oed.wa.gov/growth.

See GMA map below.

Washington State Counties Planning under the GMA



